

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

WESTCO BAKEMARK

Employer

and

Case 19-RC-13756

TEAMSTERS LOCAL 117, affiliated with
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees, including leadmen and drivers, employed at the Employer's 1st Ave. S. plant/warehouse and its 40th Ave. S. distribution warehouse, both in Seattle, Washington; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

Facts

¹ Both parties filed briefs, which have been considered.

The Employer is engaged in the production and distribution of bakery ingredients on a non-retail basis. Involved herein are a mixing/packaging facility on 1st Ave. S. ("production facility", "1st Ave." or "plant"), and a distribution facility on 40th Ave. S. ("distribution facility" or "40th Ave.") both in Seattle, Washington. The Petitioner seeks a two-facility unit, but excluding the drivers. The Employer asserts that a two-site unit is inappropriate, the unit should be limited to the plant; alternatively, if a two-location unit is an appropriate unit, then the drivers must be included. There are also several leads whose status as supervisors is in dispute.

The Employer is a multi-state enterprise, and itself apparently part of a national organization. Insofar as here relevant, there is a Seattle General Manager, Randall Hoffman, who reports to Employer Vice-President Rich Look, in Union City (presumably, California). Hoffman is responsible for all aspects of the Seattle operations, from production to distribution to marketing and all administrative aspects. That responsibility extends to a plant in Cottage Grove, Oregon which manufactures baked and frozen products.²

Reporting to Look is a controller, and Operations Manager ("OM") John Kupniewski. (Presumably there are others, but the record does not so reflect.) Reporting to Kupniewski are the Cottage Grove production manager; Bill Adams, Production Supervisor at the 1st Ave. production facility; and Vance Kinney, Distribution Supervisor at the 40th Ave. distribution facility.

Production at 1st Ave is carried out around the clock on three shifts, five days per week under normal circumstances. There are three panel operators, one warehouse person and about another 12 employees, including quality control. Raw materials are received at the plant warehouse and stored. As needed, they are drawn for production, which consists of mixing various bulk raw materials to make mixes of various sorts, such as bread mixes or pizza crust mixes, for sale to bakeries. The product is then packaged in 50-pound bags, stacked on pallets, wrapped with plastic shipping wrap and moved into the adjacent production warehouse. The entire process is highly automated. The plant makes perhaps 800 -1000 different products.

Finished product is stored at the adjacent production warehouse until it is all trucked to the distribution warehouse, exclusively by company employees, generally the drivers. There are two exceptions: It appears from the record that some product may be shipped to "Oregon" by common carrier, directly from the production warehouse; in addition, two very large customers pick up full- or half-truckload quantities of finished product, by the trailer load, at the production warehouse. Product is made in advance for storage so that adequate inventory is available during the cycle peaks during the year; thus, there is usually no need for immediate transport over to the distribution center, but goods are not stored at the production warehouse for any appreciable period; they are briefly "parked" there until necessity requires, or workload permits, transfer to the distribution warehouse, about 6 miles away.

Work at the distribution warehouse is covered by two warehouse shifts totaling 6 employees and one shift of 7 drivers. The warehouse handles about 3000 different items. Product is received on the day shift from the production warehouse and vendors and stowed in its assigned slot in the warehouse. Also during the day, but primarily at night, product is pulled and orders assembled. Orders are staged, checked for accuracy and loaded onto the truck in reverse order of delivery. Warehouse persons also pull orders for will-call customers. On infrequent occasions they are called upon to make small, emergency deliveries to customers,

² No party contends any unit should include the Cottage Grove plant.

using their personal auto. They regularly drive a "panel truck" between the warehouse and the production facility when something is needed quickly.

The drivers report in the early morning, between 4AM and 5AM, spend about an hour loading frozen and cooled items³ and handling attendant paperwork, and head out on their routes. They unload product, rotate it in the customer's storage facility, handle return and apparently have other customer interaction. It does not appear from the record that the drivers are "route salesmen" in the usual sense of both delivering product and selling/taking orders. They return anywhere from 5 to 10 hours later (there is one overnight run, bi-weekly), depending on workload and route, account for returns and empty pallets, handle paperwork; at that point, their driving work is complete.

Sometimes when work is slow - the business is cyclical, with three main cycles per year - a driver returns with less than eight hours of work. In such cases, the driver will pull orders in the warehouse to finish out the day. There is one driver who regularly works as a driver 3-4 days per week, and works as a warehouseman the remainder of the work week. Drivers are also assigned to pick up semi loads of finished product at the production warehouse. There is also frequent shuttling of product between the two warehouses on a smaller scale. Sometimes the production plant runs out of a particular ingredient that it usually stocks, and secures that staple from the distribution warehouse, where it had been stored for intended re-sale. (Production raw materials are not normally routed through the distribution warehouse.)

The distribution facility also houses the Seattle offices, including all accounting, sales, payroll and personnel services. Personnel records are maintained at this site. The General Manager and Controller are housed there. The Operations Manager has an office at both sites and divides his time between the two.

There are common employee rules and benefits at both locations. General laborers at the plant and warehousemen at the distribution facility are paid in the same range, about \$14. Drivers and panel operators are paid about \$16. Quality assurance hourly pay varies between \$14 and \$18. All employees involved wear white shirts and pants, with an employer logo, except the drivers, who wear a different shirt with Employer emblem and work pants.

Hiring is handled centrally. The OM screens applications, then refers selectees for interview with the relevant site manager. They send recommendations back. Discipline must be cleared by at least the OM. Wages are set by the General Manager, based upon ranges dictated by headquarters.

Different kinds and levels of knowledge are required at the two sites; an employee at one could not readily substitute at the other without some detailed training. Production employees need to know only the 800+ house-made products, while distribution employees all need to know the full 3000-product line, as well as the warehouse layout. Production employees are trained in accomplishing the production steps, and presumably have sanitation training as well. Semi drivers require a commercial driver's license.

³ There was reference to loading a frozen box, but the record doesn't show if an insulated box is simply placed into the truck at the last moment, or if the goods are physically transferred from the frozen box into the truck.

There has been minimal interchange between the two sites; the same or even less holds true for transfers. No weight can be given to this minimal or non-existent level, because the Employer became a two-site operation in August 1998 at the earliest. It was at that time that it purchased a competitor and began consolidating the two manufacturing operations to the 40th Avenue facility, and consolidating all other operations to what had been the seller's 1st Avenue facility. That process was completed about January 1, 1999. Prior to the merging of operations, the Employer had performed all functions at 40th.

The OM decides when to make how much of each product, and when and in what order to transfer it from the production warehouse to the distribution center. He makes 90% of the purchases of raw materials, while a buyer at the office handles the balance of the raw materials as well as all goods for the distribution center.

Analysis

The Union seeks a combined unit of the plant plus the warehouse employees, minus the drivers. The Employer contends that a combined unit is not appropriate, but that if it is, it must include the drivers.

There are many potential units. A Petitioner may select any unit it wishes, as long as it is *an* appropriate unit; it need not select the optimal unit. A single-facility unit is presumptively appropriate, and here either location standing alone might be appropriate. However, the issue is whether the Petitioner's sought unit is appropriate, i.e., the *two site* unit. The fact that single sites might be appropriate does not mean a combined unit is not. In assessing the appropriateness of a multi-site unit, we examine all of the usual community of interest factors, i.e., what makes the groups of employees similar or dissimilar, what extends lines between the two groups, and what draws lines around each individual group.

Factors favoring a combined unit include common control of payroll/personnel/labor relations, purchasing, invoicing, administrative functions; and a single, "floating" operations manager at the two facilities. In addition, there is very substantial integration of operations, in that most of the product manufactured is destined for the distribution center, and the production facility is the source of a substantial amount of the center's wares - perhaps 30% of the different products are manufactured at the plant, only 6 miles away. (The record does not reflect what percentage of revenue, or physical volume, this 30% represents, but it seems likely that it is even higher, since it appears that it is the high-volume, bulk items that are produced.) The record does not disclose any other facilities closer than Cottage Grove, Oregon - easily 300 miles distant - the closest administrative "relative" in the corporate family. There is a constant shuttling of product from the production warehouse to the distribution center, by center drivers and to a much lesser extent by warehouse employees. Some product is also shuttled over by the production warehouseperson, and ingredients are sometimes obtained from the distribution warehouse by production employees. Employees have common work rules, similar salary ranges, common benefits, similar uniforms. There is common supervision at the second level, i.e., the OM. There is no apparent bargaining history, and no other labor organization seeks to represent the employees in a different unit.

On the other side of the scale, factors favoring separation include separate first-level supervision⁴ at the two facilities, but their authority is fairly constrained by the regular presence of the OM at both and the control of wages, benefits, and employee relations at the “combined” level. There has been at most minimal interchange and transfer between the two groups, but there is only a brief history of the fully-combined operation - less than two months; this period is too short to establish a meaningful history one way or the other. The groups of employees have different skills and training, but it does not appear that any cannot be easily mastered in a relatively short time, at least enough to become satisfactorily productive, with the exception of the over-the-road drivers.

On balance, I find that the differentiating factors, while perhaps not precluding the appropriateness of single facility units, are not so strong that they overwhelm the factors favoring appropriateness of a combined unit.⁵

That being said, we turn to the Petitioner’s request that the facilities be combined, but the drivers be excluded. I find this to be inappropriate. The drivers have no separate supervision, not even a separate leadman; the first-level supervisor of all distribution center employees is the Distribution Supervisor. The drivers, or many of them, regularly pull orders in the warehouse. The warehouse employees frequently shuttle loads between the two facilities, albeit not to the same degree as drivers and in a smaller truck. Fred Lister, the production warehouseperson, occasionally substitutes for drivers. The drivers have pay that is no higher than the highest paid other employees in the combined unit, and they have common benefits. Drivers are hourly paid, as are all other employees. In short, there is no basis to permit exclusion of the drivers from the rest of the distribution employees. Accordingly, they will be included.

There are approximately 29 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board’s Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the

⁴ The parties stipulated that the Operations Manager, John Kupniewski; the Production Supervisor, Bill Adams; and the Distribution Supervisor, Vance Kinney are all statutory supervisors. I so find. Accordingly, they are excluded from any unit.

The Union contended that various leads are statutory supervisors. The record reflects, however, that they are only lead persons, primarily acting as conduits. They have no independent authority to do anything falling within the Section 2(11) definition. Accordingly, I find all to be statutory employees and part of any unit.

⁵ The cases cited by the Employer concerned whether a single unit sought by a union was inappropriate. The issue herein is not whether a smaller unit is *an* appropriate unit, but whether the larger unit is *an* appropriate unit. The questions are not mutually exclusive.

military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by .

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 4 copies of an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Seattle Regional Office, 2948 Jackson Federal Building, 915 Second Avenue, Seattle, Washington, on or before March 5, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by March 12, 1999.

DATED at Seattle, Washington, this 26th day of February, 1999.

/s/ PAUL EGGERT

Paul Eggert, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

440-3300-3700
440-3300-3375-6200
440-1760-6260